IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et al.*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:05-cv-00329-GKF-PJC
	)	
TYSON FOODS, INC., *et al.*	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO STRUCTURE THE MODE AND ORDER OF PRESENTATION OF THE CASE TO SEPARATE JURY ISSUES FROM EQUITABLE ISSUES

Defendants respectfully move the Court to exercise its authority and discretion under Federal Rule of Evidence 611 and/or Federal Rule of Civil Procedure 42(b) to structure the presentation of evidence at trial so as to begin with the evidence relating to the jury's determination of liability under Count 7. Upon the return of a verdict on Count 7, other testimony relating to the numerous non-jury issues can be presented, as necessary, after the jury is excused. This proposal will reduce the burden on the jury and on the Court, conserve judicial resources, and eliminate the potential for error or prejudice inherent in having the jury exposed to testimony on matters irrelevant to the determination of liability under Count 7.

Pursuant to the Court's Order of August 26, the only question to be tried to the jury is whether Defendants are *liable* for violation(s) of 27A Okla. Stat. § 2-6-105(A), as alleged in Count 7. *See* Opinion and Order, Dkt. No. 2527 (Aug. 26, 2009) ("Order"). The jury will not determine the extent of any injury or determine the amount or nature of civil penalties, injunctive relief, or remedial relief; those issues fall to the Court. *See id.* at 2. The evidence on the liability question—*i.e.*, any evidence relating to the extent to which phosphorous or bacteria are transported from poultry litter applied *in Oklahoma*,[1] attributable to Defendants, to waters of the State—is almost entirely separate from the evidence relevant to the remaining non-jury issues—*i.e.*, evidence pertaining to the entire IRW, the scope of the alleged injury to the environment, alleged health effects, and remediation proposals. Evidence on the latter subjects is not only irrelevant to the jury's decision under Count 7, but also poses a risk of bias and undue prejudice.

[1] The Court has previously held that the statutes on which Count 7 is based cannot be applied extraterritorially. *See* Aug. 18, 2009 Hearing at 100:13-101:16, 188:7-11 (Ex. A); June 15, 2007 Hearing Tr. at 16:22-17:14, 44:17-45:7 (Dkt. No. 2057 Ex. 38); Dkt. No. 1187; Dkt. No. 1202; *see also* Dkt. No. 2166 at 13 (conceding that "[i]n light of this Court's June 15, 2007 ruling, the State is not seeking to apply its claim under 27A Okla. Stat. § 2-6-105 (Count 7) to conduct outside the State of Oklahoma). Because Count 7 applies solely to conduct occurring in the State of Oklahoma, the jury should not be exposed to evidence related to actions or conditions relevant only to the Arkansas-portion of the Watershed.

If the jury remained empanelled through the entire trial, they could be excused when irrelevant and prejudicial testimony was adduced, but such an approach would be wasteful of the jurors' time. Given that non-jury trials consume fewer court days, such an approach also would be wasteful of the Court's resources. Accordingly, because requiring the parties to present their evidence on Count 7 first—and obtaining a verdict on that single count before proceeding further—would eliminate substantial prejudice while promoting judicial economies, Defendants respectfully move the Court to adopt such a process under Rule of Evidence 611 and Civil Procedure Rule 42(b).

BACKGROUND

In its August 26, 2009, Order, the Court determined that Plaintiffs are entitled to a jury determination of Defendants' liability under 27A Okla. Stat. § 2-6-105(A). *See* Order at 1. The Court further noted that in the event the jury finds Defendants to be liable, "the amount of civil penalties to be imposed on defendants will be determined by the Court, a procedure that 'does not infringe on the right to a jury trial.'" Order at 2 (quoting *Tull v. United States*, 481 U.S. 412, 426-27 (1987)). Finally, the Court noted that Plaintiffs are not entitled to a jury trial on any other claim or issue. *See* Order at 3.[2] Accordingly, the sole question for the jury is whether Defendants are liable under 27A Okla. Stat. § 2-6-105(A).

[2] The remaining claims in this action are:

- Count 3 (RCRA);
- Counts 4 and 6 (state common law nuisance and trespass claims for injunctive relief based on conduct occurring in Oklahoma);
- Count 5 (federal common law nuisance claim for injunctive relief);
- Count 7 (Oklahoma statutory claims alleging violation(s) of 2 Okla. Stat. § 2-18.1(A), and/or 27A Okla. Stat. § 2-6-105(A) based on conduct occurring in Oklahoma);
- Count 8 (claim under Oklahoma Registered Poultry Feeding Operations Act, 2 Okla. Stat. § 10-9.7, *et seq.*, alleging violation(s) by Tyson in operation of a single poultry feeding operation for a period of four (4) years).

In order to establish liability under 27A Okla. Stat. § 2-6-105(A), Plaintiffs must prove that Defendants, by virtue of their acts within the State of Oklahoma: (1) "cause[d] pollution of any waters of the state;" or (2) "place[d] or cause[d] to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state." *Id*. The jury must resolve these elements with regard to each Defendant and as to "each violation," measured by "each day or part of a day upon which" it occurred, and for which proven violations the Court will be asked to assess a "civil penalty of not more than Ten Thousand Dollars ($10,000)" pursuant to 27A Okla. Stat. § 2-3-504(A)(2)&(A)(4). Specifically, Plaintiffs must prove that *particular* defendant(s) caused *particular* violation(s) on *particular* days. *See* Dkt. No. 2057 at 24-25. Section 2-6-105(A) establishes a claim that requires specific evidence of liability, not merely generalized assertions of conduct. *See Moore v. Texaco, Inc.*, 244 F.3d 1229, 1231-32 (10th Cir. 2001) (rejecting generalized allegations in the absence of all potential sources of the alleged pollution); *see also Smicklas v. Spitz*, 846 P.2d 362, 366 (Okla. 1992); *N.C. Corff P'ship Ltd. v. Oxy USA, Inc.*, 929 P.2d 288, 295 (Okla. Civ. App. 1996); *see, e.g., Brennan v. OSHRC*, 511 F.2d 1139, 1145 (9th Cir. 1975) ("Fundamental fairness would require that one charged with and penalized for violation be shown to have caused, or at least to have knowingly acquiesced in, that violation. Under our legal system, to date at least, no man is held accountable, or subject to fine, for the totally independent act of another."). And, in any event, if the jury finds Defendants liable, the Court will be asked to impose a civil penalty for "each violation" pursuant to 27A Okla. Stat. § 2-3-504(A)(2).[3] The Court will be able to do so only if the jury has assessed the metes and bounds of each such violation—including how many occurred, when, and which

[3] "[A]ny person who violates … the Oklahoma Environmental Quality Code … [m]ay be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars ($10,000.00) *for each violation*." 27A Okla. Stat. §§ 2-3-504(A)&(A)(2) (emphasis added).

Defendant(s) were responsible for each.[4]

Finally, the jury must resolve these issues with regard to conduct that occurred solely in Oklahoma. As the Court has held repeatedly, Oklahoma statutory and common law may not extend beyond the political boundaries of the State. *See* Aug. 18, 2009 Hearing Tr. at 100:13-101:16, 188:7-11 (Ex. A); June 15, 2007 Hearing Tr. at 16:22-17:14, 44:17-45:7 (Dkt. No. 2057 Ex. 38); Dkt. No. 1187; Dkt. No. 1202; *see also* Dkt. No. 2166 at 13 (conceding that "[i]n light of this Court's June 15, 2007 ruling, the State is not seeking to apply its claim under 27A Okla. Stat. § 2-6-105 (Count 7) to conduct outside the State of Oklahoma"). Therefore, Plaintiffs must prove any violations of 27A Okla. Stat. § 2-6-105(A) solely through evidence of conduct occurring in the State of Oklahoma.

LEGAL STANDARD

Federal district courts have broad discretion in structuring the conduct of trial. *See* Fed. R. Evid. 611; Fed. R. Civ. P. 42(b); *see also Easton v. City of Boulder, Colo.*, 776 F.2d 1441, 1447 (10th Cir. 1985); *Sanders v. S.W. Bell Tel., L.P.*, 2009 U.S. Dist. LEXIS 70931, *1-2 (N.D. Okla. Aug. 12, 2009) ("A district court has broad discretion in deciding whether to bifurcate issues for trial."). As the Tenth Circuit has recognized, "[b]ifurcation is appropriate when it is done in furtherance of convenience or to avoid prejudice, or when separate trials will be

[4] Plaintiffs often argue that they may present their case through circumstantial evidence. *See, e.g.*, Dkt. No. 2166 at 24-25. But the question is not *whether* they may use circumstantial evidence, but rather circumstantial evidence *of what*? In order to prevail, Plaintiffs must present evidence, circumstantial or otherwise, that supports a finding of a specific violation by a particular Defendant, not just a generalized allegation that the "poultry industry" contributed to the level of phosphorous in the Illinois River. As Plaintiffs conceded in response to the Court's questioning, it is possible that poultry litter could be land applied somewhere in the IRW without *necessarily* polluting the "waters of the state." *See* Aug. 18, 2009 Hearing Tr. at 60:5-64:1 (Ex. A). Thus, the question is whether any specific application of poultry litter in the Oklahoma portion of the IRW resulted in runoff from a field, and whether that runoff caused (or was likely to cause) pollution to the waters of the State in violation of 27A Okla. Stat. § 2-6-105(A).

conducive to expedition and economy." *Mandeville v. Quinstar Corp.*, 109 Fed. App. 191, 194 (10th Cir. 2004) (internal quotations omitted); *see Angelo v. Armstrong World Indus.*, 11 F.3d 957, 964 (10th Cir. 1993) ("The trial court has considerable discretion in determining how a trial is to be conducted."). Such a determination ought to be "'made with regard to judicial efficiency, judicial resources and the likelihood that a single proceeding will unduly prejudice either party or confuse the jury.'" *United States CFTC v. Bradley*, 2007 U.S. Dist. LEXIS 13980, *5-6 (N.D. Okla. Feb. 27, 2007) (quoting *York v. AT&T Co.*, 95 F.3d 948, 958 (10th Cir. 1996)). Any of these factors can justify separately prioritizing one count over others. *See Bradley*, 2007 U.S. Dist. LEXIS 13980, at *5-6.

ARGUMENT

The sole question remaining for a jury is whether individual Defendants are liable for one or more violations of 27A Okla. Stat. § 2-6-105(A). To resolve this dispute, the jury need only hear evidence pertaining to the matters that bear upon the elements of liability established by that statute.

Under these circumstances, it would be wasteful of judicial resources and prejudicial to Defendants to present the entire case to the jury. Presentation of evidence to a jury is more involved, subject to more rules, substantially more time consuming, and fraught with more risk for error, than presentation to a court. In particular, the jury does not need to hear—and should not hear—any evidence involving alleged conduct in Arkansas, including but not limited to the more than two-thirds of poultry farms in the IRW that are located in Arkansas and the development, implementation, and enforcement of Arkansas' regulatory program under which the use of poultry litter in the Arkansas-portion of the IRW is regulated. Nor need the jury hear any evidence regarding the scope of any alleged injury to waters of the State, including for instance the alleged deterioration of the IRW over time, alleged health risks from pathogenic

bacteria or disinfection by-products, alleged lake eutrophication, or claimed injuries to fish or benthic populations.[5] Finally, the jury has no need to hear any evidence regarding the billion-plus dollars Plaintiffs assert is necessary to remediate the IRW. Courts routinely bifurcate liability from remedy issues under similar circumstances where the questions for the jury are discrete and clearly separable. In this case, structuring the trial to resolve the Count 7 jury question first will conserve judicial resources, streamline presentation of the evidence, and avoid a substantial potential for prejudice to Defendants and confusion of the jury.

A. The Issues Are "Clearly Separable" and Presentation of the Evidence Will Only Serve to Unduly Prejudice Defendants and Confuse the Jury

First, the topics noted above are "clearly separable" and distinctly immaterial to any jury question. *Angelo*, 11 F.3d at 964; *AG Equip. Co. v. AIG Life Ins. Co., Inc.*, 2009 U.S. Dist. LEXIS 6610 (N.D. Okla. Jan. 29, 2009) (same); *see also Vichare v. Ambac Inc.*, 106 F.3d 457, 466 (2d Cir. 1996) (citations omitted). Far from being relevant to the discrete issues for the jury, evidence pertaining to non-Oklahoma conduct, scope of the alleged injury, and remedial alternatives will only unfairly prejudice and confuse the jury. Accordingly, separation of the issues is appropriate.

1. Evidence related to conduct occurring outside of Oklahoma is irrelevant to the jury question under Count 7 and would unnecessarily confuse and potentially prejudice the jury

Separation of counts is appropriate where it can "simplif[y] the issues for the jury and reduce[] the danger of unnecessary jury confusion." *Chemstar, Inc. v. Liberty Mut. Ins. Co.*, 1994 U.S. App. LEXIS 32772, *7-8 (9th Cir. Nov. 16, 1994) (internal quotations omitted). Here, as the Court has held, Oklahoma statutory law and common law cannot be applied beyond the

[5] Examples of expert witnesses listed by parties as "primary" trial witnesses whose opinions relate exclusively (or almost exclusively) to such subjects would include Eugene Welch, Dennis Cooke, Scott Wells, Herb Dupont, Christopher Teaf, Robert Lawrence, Herman Gibb, Jan Stevenson, Michael McGuire and Jim Chadwick.

State's borders. *See supra* at 1 n.1, 4. Because the jury portion of Count 7 arises solely under Oklahoma statutory law, only evidence of conduct occurring within the State of Oklahoma is relevant. Evidence concerning conduct occurring in Arkansas is irrelevant and would serve only to confuse the jury. Proceeding with Count 7 first will allow the jury to assess Plaintiffs' proof of Defendant-specific, Oklahoma-specific conduct in a clear and concise manner, without the confusion that may be injected by discussion of litter application in Arkansas, or testimony from Arkansas Growers and Arkansas officials regarding agricultural practices in Arkansas and Arkansas' own distinct regulatory scheme.[6]

Presenting the entire case to the jury without disaggregating Arkansas from Oklahoma conduct also risks substantial prejudice to Defendants. Plaintiffs' counsel have not been shy about making references to Defendants as "out-of-state corporate polluters." *See Defendants' Response to State of Oklahoma's Motion in Limine to Preclude Defendants from Making Certain Categories of References to its Private Counsel*, Dkt. No. 2497, at 2-3 (Aug. 20, 2009)*; see also United States v. Caraway*, 534 F.3d 1290, 1301 (10th Cir. 2008) ("To be unfairly prejudicial, the evidence must have 'an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.'" (quoting Fed. R. Evid. 403 advisory committee's note)). All issues surrounding the longstanding interstate tensions over water-quality issues are irrelevant to whether any farmer *in Oklahoma* engaged in conduct in violation of 27A Okla. Stat. § 2-6-105(A).

2. Evidence related to the scope of the alleged injury is irrelevant to the jury question under Count 7 and may prejudice the jury against Defendants

Evidence as to the nature and extent of the alleged harms, including but not limited to

[6] The parties' lists of "primary witnesses" attached to the proposed pre-trial order submitted to the Court confirm the substantial number of Arkansas poultry farmers and regulators who are likely to be called at testify at the trial of this matter.

adverse health effects, changed aesthetic and recreational value as measured by historical data, and a variety of environmental impacts, is not relevant to the jury's decision of whether there have been "violations" of 27A Okla. Stat. § 2-6-105(A).[7] In various pleadings, reports, and arguments in this case, Plaintiffs have made broad "injury" and "risk" allegations (typically unsupported by any actual evidence) regarding, *inter alia*, eutrophication, fish kills, salmonelliosis, campylobcteriosis, giardiasis, cryptosporidiosis, pathogenic e. coli 0157:H7, swine flu, H5N1 avian influenza, Guillain-Barre Syndrome, Reiters' Syndrome, acute febrile respiratory illness, kidney failure, "blue babies," potentially carcinogenic disinfection by-products, toxic algae, spontaneous abortions, the negative effects of antibiotics, and myriad other adverse human health effects. Such evidence and argument has no bearing on whether any Defendant "cause[d] pollution of any waters of the state or … place[d] or cause[d] to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state" in violation of 27A Okla. Stat. § 2-6-105(A).

Instead, such evidence and argument would only "invite[] [jurors] to ponder matters that are not within their province, distract[] them from their fact-finding responsibilities, and create[] a strong possibility of confusion." *Shannon v. United States*, 512 U.S. 573, 579, 584-85 & n.10 (1994); *Blue Cross & Blue Shield of New Jersey, Inc. v. Philip Morris, Inc.*, 138 F. Supp. 2d 357, 368 (E.D.N.Y. 2001). Moreover, such evidence and argument has a strong potential to cause unfair prejudice and is precisely the sort of emotionally-charged evidence routinely segregated to

[7] The Court, however, may consider such issues in assessing a penalty. *See* 27A Okla. Stat. § 2-3-504(H) ("In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require."); Order at 2.

avoid such an impact. *See, e.g., Chlopek v. Fed. Ins. Co.*, 499 F.3d 692, 700-701 (7th Cir. 2007) ("[E]vidence about the full extent of Denise's injuries was not relevant to the only fact at issue [and] … was best left for the damages phase so as not to cloud the issues or prejudice the defendant."); *Fort James Corp. v. Solo Cup Co.*, 412 F.3d 1340, 1344 (Fed. Cir. 2005) ("Because the [relevant] issues were to be tried to the bench and out of concern that [plaintiff] would be prejudiced by [defendant's] 'parade of horribles' before the jury, the district court granted Fort James's motion and effectively bifurcated the trial.").

3. Evidence related to remedial alternatives is irrelevant to the jury question under Count 7 and will cause unnecessary confusion and potential prejudice

Evidence of issues such as alternative uses of poultry litter, the costs of litter removal, and the potential impact of an injunction or remediation is irrelevant to the narrow question of liability under 27A Okla. Stat. § 2-6-105(A). For example, Plaintiffs' remediation expert, Todd W. King, proposes more than $1 billion in potential remedial programs that Plaintiffs ask the Court to impose on Defendants. *See* King Report at App. 1, pp. 1-12 (May 15, 2008) ("Summary of Costs for Remedial Alternatives") (Ex. B). As the Court noted at oral argument, while Mr. King's opinions may be relevant to the Court's equitable balancing in the event Defendants are found to be liable, *see* Aug. 13, 2009 Hearing Tr. at 96:6-99:13 (Ex. C), they are irrelevant to liability. Not only is the remedial evidence extreme, *see id.* at 97:6-7, but such evidence may tend to confuse the jury and prejudice jurors against Defendants, *see, e.g.*, *Shannon*, 512 U.S. at 579, 584-85 & n.10; *Chlopek*, 499 F.3d at 700-701; *Fort James Corp.*, 412 F.3d at 1345.

B. Staggering the Proceedings Will Promote Expedition and Judicial Economy

Proceeding as Defendants propose—hearing the Count 7 jury question first—will further judicial economy and efficiency. *See, e.g., Mandeville v. Quinstar Corp.*, 109 Fed. App. 191,

194 (10th Cir. 2004) ("[T]he interests of judicial expedition and economy favor separation of issues and the issues are clearly separable") (internal quotations omitted); *Sanders*, 2009 U.S. Dist. LEXIS 70931, at *1-2 (granting motion to bifurcate to promote judicial economy). Here, judicial economy will be served best by resolving Plaintiffs' jury claims under 27A Okla. Stat. § 2-6-105(A) first, and then, after dismissing the jury, proceeding more efficiently with the remaining issues for the Court. *See, e.g., DeLeye v. Wisby*, 1986 U.S. Dist. LEXIS 17661, *5-6 (D. Kan. Nov. 14, 1986).

Proceeding in this manner would conserve judicial resources because the presentation of evidence to a jury takes substantially longer than presentation to a court. Thus, presenting this entire case to a jury will take longer—possibly weeks longer—than presenting only those portions actually relevant to the sole jury issue.

Second, proceeding with the lone jury issue first will obviously be beneficial to the jury. There is no justifiable basis to impose extra days or weeks of service on the members of the jury charged with making a liability finding under a single count. As the examples above make clear, there are a number of categories of witnesses and evidence not relevant to liability under 27A Okla. Stat. § 2-6-105(A). Presentation of all that evidence—on Arkansas-based conduct, Arkansas' regulatory program, scope of the alleged injury, and remedial alternatives—could consume weeks of time. Thus, putting aside any question of whether such evidence may confuse or prejudice the jury, there simply is no good reason to make the jury sit through it.

Finally, separation of these issues is appropriate because doing so will not impose any additional burden on the Court, the parties, or require any inefficiency or duplication. Because the Court will be the fact-finder as to all non-jury issues, there will be no need for the same evidence to be presented more than once. The only downside to this bifurcation is the possibility that a small handful of expert witnesses may have to testify twice—because their opinions touch

on both liability under 27A Okla. Stat. § 2-6-105(A) (jury) and other issues which are relevant only to matters to be decided by the Court—*i.e.*, Arkansas-based conduct, Arkansas' regulatory program, scope of the alleged injury, and remedial alternatives. But that small cost is far outweighed by the benefits of this approach. *See, e.g.*, *Angelo*, 11 F.3d at 965 ("Although the same witnesses may testify in both phases, the issues and testimony are different."). Given the enormous number of experts at issue, and the overlap between them, few if any witnesses would be *necessary* to both parts of the case. But, even if a few witnesses have to testify twice on different subjects, there is no basis to require the entire case to be presented to the jury. In sum, the interests of judicial economy and efficiency militate in favor of resolving the Count 7 jury issue first before proceeding with Plaintiffs' equitable claims and requests for relief.

CONCLUSION

For the foregoing reasons, the Court should exercise its discretion to structure the trial so as to begin with the jury question under Count 7.

Respectfully submitted,

BY: *__/s/ Jay T. Jorgensen__*

Thomas C. Green
Mark D. Hopson
Jay T. Jorgensen
Gordon D. Todd
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

-and-

Robert W. George
Vice President & Associate General Counsel
Tyson Foods, Inc.
Bryan Burns
Timothy T. Jones
2210 West Oaklawn Drive

Springdale, Ark. 72764
Telephone: (479) 290-4076
Facsimile: (479) 290-7967

-and-

Michael R. Bond
KUTAK ROCK LLP
Suite 400
234 East Millsap Road
Fayetteville, AR 72703-4099
Telephone: (479) 973-4200
Facsimile: (479) 973-0007

-and-

Patrick M. Ryan, OBA # 7864
Stephen L. Jantzen, OBA # 16247
RYAN, WHALEY & COLDIRON, P.C.
119 N. Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766

ATTORNEYS FOR TYSON FOODS, INC.; TYSON POULTRY, INC.; TYSON CHICKEN, INC; AND COBB-VANTRESS, INC.

BY:____/s/*James M. Graves*_____

(SIGNED BY FILING ATTORNEY WITH PERMISSION)

Woodson W. Bassett III
Gary V. Weeks
James M. Graves
K.C. Dupps Tucker
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702-3618
Telephone: (479) 521-9996
Facsimile: (479) 521-9600

-and-

Randall E. Rose, OBA #7753
George W. Owens
OWENS LAW FIRM, P.C.
234 W. 13th Street
Tulsa, OK 74119
Telephone: (918) 587-0021
Facsimile: (918) 587-6111

ATTORNEYS FOR GEORGE'S, INC. AND GEORGE'S FARMS, INC.

BY: */s/ A. Scott McDaniel*

(SIGNED BY FILING ATTORNEY WITH PERMISSION)

A. Scott McDaniel, OBA #16460
Nicole M. Longwell, OBA #18771
Philip D. Hixon, OBA #19121
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC
320 South Boston Ave., Ste. 700
Tulsa, OK 74103
Telephone: (918) 382-9200
Facsimile: (918) 382-9282

-and-

Sherry P. Bartley
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, AR 72201
Telephone: (501) 688-8800
Facsimile: (501) 688-8807

ATTORNEYS FOR PETERSON FARMS, INC.

BY: */s/ John R. Elrod*

(SIGNED BY FILING ATTORNEY WITH PERMISSION)

John R. Elrod
Vicki Bronson, OBA #20574
P. Joshua Wisley
CONNER & WINTERS, L.L.P.
211 East Dickson Street
Fayetteville, AR 72701

Telephone: (479) 582-5711
Facsimile: (479) 587-1426

-and-

Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, L.L.P.
4000 One Williams Center
Tulsa, OK 74172
Telephone: (918) 586-5711
Facsimile: (918) 586-8553

ATTORNEYS FOR SIMMONS FOODS, INC.

BY: */s/ Robert P. Redemann*

(SIGNED BY FILING ATTORNEY WITH PERMISSION)
Robert P. Redemann, OBA #7454
PERRINE, MCGIVERN, REDEMANN, REID, BERRY & TAYLOR, P.L.L.C.
Post Office Box 1710
Tulsa, OK 74101-1710
Telephone: (918) 382-1400
Facsimile: (918) 382-1499

-and-

Robert E. Sanders
Stephen Williams
YOUNG WILLIAMS P.A.
Post Office Box 23059
Jackson, MS 39225-3059
Telephone: (601) 948-6100
Facsimile: (601) 355-6136

ATTORNEYS FOR CAL-MAINE FARMS, INC. AND CAL-MAINE FOODS, INC.

BY: */s/ John H. Tucker*

(SIGNED BY FILING ATTORNEY WITH PERMISSION)
John H. Tucker, OBA #9110
Theresa Noble Hill, OBA #19119
RHODES, HIERONYMUS, JONES, TUCKER & GABLE, PLLC
100 W. Fifth Street, Suite 400 (74103-4287)
P.O. Box 21100
Tulsa, Oklahoma 74121-1100

Telephone: (918) 582-1173
Facsimile: (918) 592-3390

-and-

Delmar R. Ehrich
Bruce Jones
Krisann C. Kleibacker Lee
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600

ATTORNEYS FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

CERTIFICATE OF SERVICE

I certify that on the 31st of August, 2009, I electronically transmitted the attached document to the court's electronic filing system, which will send the document to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
Tina L. Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us
Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
David P. Page	dpage@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	
Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	
J. Randall Miller	rmiller@mkblaw.net
Louis W. Bullock	lbullock@bullock-blakemore.com
Michael G. Rousseau	mrousseau@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
Motley Rice LLC	
Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Motley Rice	
COUNSEL FOR PLAINTIFFS	
Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	
Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com

Gordon D. Todd gtodd@sidley.com
Erik J. Ives eives@sidley.com
Sidley Austin LLP

Robert W. George robert.george@tyson.com

Michael R. Bond michael.bond@kutakrock.com
Erin Walker Thompson erin.thompson@kutakrock.com
Kutak Rock LLP
COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay rtl@kiralaw.com
Kerr, Irvine, Rhodes & Ables

Jennifer S. Griffin jgriffin@lathropgage.com
Lathrop & Gage, L.C.
COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann rredemann@pmrlaw.net
Lawrence W. Zeringue lzeringue@pmrlaw.net
David C. Senger dsenger@pmrlaw.net
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

Robert E. Sanders rsanders@youngwilliams.com
E. Stephen Williams steve.williams@youngwilliams.com
Young Williams P.A.
COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens gwo@owenslawfirmpc.com
Randall E. Rose rer@owenslawfirmpc.com
The Owens Law Firm, P.C.

James M. Graves jgraves@bassettlawfirm.com
Gary V. Weeks
Paul E. Thompson, Jr. pthompson@bassettlawfirm.com
Woody Bassett wbassett@bassettlawfirm.com
Jennifer E. Lloyd jlloyd@bassettlawfirm.com
Bassett Law Firm
COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod jelrod@cwlaw.com
Vicki Bronson vbronson@cwlaw.com
P. Joshua Wisley jwisley@cwlaw.com
Conner & Winters, P.C.

Bruce W. Freeman bfreeman@cwlaw.com

D. Richard Funk
Conner & Winters, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

John H. Tucker jtuckercourts@rhodesokla.com
Leslie J. Southerland ljsoutherlandcourts@rhodesokla.com
Colin H. Tucker chtucker@rhodesokla.com
Theresa Noble Hill thillcourts@rhodesokla.com
Rhodes, Hieronymus, Jones, Tucker & Gable

Terry W. West terry@thewesetlawfirm.com
The West Law Firm

Delmar R. Ehrich dehrich@faegre.com
Bruce Jones bjones@faegre.com
Krisann Kleibacker Lee kklee@baegre.com
Todd P. Walker twalker@faegre.com
Faegre & Benson LLP
COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

Michael D. Graves mgraves@hallestill.com
D. Kenyon Williams, Jr. kwilliams@hallestill.com
COUNSEL FOR POULTRY GROWERS

William B. Federman wfederman@aol.com
Jennifer F. Sherrill jfs@federmanlaw.com
Federman & Sherwood

Charles Moulton charles.moulton@arkansag.gov
Jim DePriest jim.depriest@arkansasag.gov
Office of the Attorney General
COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION

Carrie Griffith griffithlawoffice@yahoo.com
COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON

Gary S. Chilton gchilton@hcdattorneys.com
Holladay, Chilton & Degiusti, PLLC

Victor E. Schwartz vschwartz@shb.com
Cary Silverman csilverman@shb.com
Shook, Hardy & Bacon, LLP

Robin S. Conrad rconrad@uschamber.com
National Chamber Litigation Center, Inc.
COUNSEL FOR AMICI CURIAE CHAMBER OF COMMERCE FOR THE U.S. AND

THE AMERICAN TORT REFORM ASSOCIATION

Richard C. Ford fordr@crowedunlevy.com
LeAnne Burnett burnettl@crowedunlevy.com
Crowe & Dunlevy
COUNSEL FOR AMICUS CURIAE OKLAHOMA FARM BUREAU, INC.

M. Richard Mullins richard.mullins@mcafeetaft.com
McAfee & Taft

James D. Bradbury jim@bradburycounsel.com
James D. Bradbury, PLLC
COUNSEL FOR AMICI CURIAE TEXAS FARM BUREAU, TEXAS CATTLE FEEDERS ASSOCIATION, TEXAS PORK PRODUCERS ASSOCIATION AND TEXAS ASSOCIATION OF DAIRYMEN

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

J.D. Strong
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

Dustin McDaniel
Justin Allen
Office of the Attorney General of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201-2610
COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION

John E. and Virginia W. Adair Family Trust
Route 2 Box 1160
Stilwell, OK 74960

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

Cary Silverman
Shook Hardy & Bacon LLP
600 14th Street NW, Suite 800
Washington, D.C. 20005-2004

Cherrie House
P.O. Box 1097
Stilwell, OK 74960

David Gregory Brown
Lathrop & Gage LC (Jefferson City)
314 E High Street
Jefferson City, MO 65101

Donna S Parker
34996 S 502 Road
Park Hill, OK 74451

Doris Mares
14943 SE 15th Street
Choctaw, OK 73020-7007

G Craig Heffington
20144 W Sixshooter Road
Cookson, OK 74427

George R Stubblefield
HC-66, Box 19-12
Proctor, OK 74457

Gordon W. and Susann Clinton
23605 S Goodnight Lane
Welling, OK 74471

Jerry M Maddux
Selby Connor Maddux Janer
P.O. Box Z
Bartlesville, OK 74005-5025

Jim Bagby
RR 2, Box 1711
Westville, OK 74965

Jonathan D Orent
Motley Rice LLC (Providence)
321 S Main Street
Providence, RI 02940

Marjorie Garman
19031 US HWY 412
Colcord, OK 74338-3861

Randall E Kahnke
Faegre & Benson (Minneapolis)
90 S 7th Street, Suite 2200
Minneapolis, MN 55402-3901

Richard E Parker
34996 S 502 Road
Park Hill, OK 74451

Robin L. Wofford
Route 2, Box 370
Watts, OK 74964

Steven B Randall
58185 County Road 658
Kansas, OK 74347

Victor E Schwartz
Shook Hardy & Bacon LLP
600 14th Street NW, Suite 800
Washington, D.C. 20005-2004

William House
P.O. Box 1097
Stilwell, OK 74960

/s/ *Jay T. Jorgensen*